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SUMMARY RECORD OF THE THIRD PART (PUBLIC)* OF THE 143rd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 22 April 1993, at 10 a.m.

Chairman: Mr. VOYAME

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* The summary record of the first part (public) and second part (closed) of the meeting appears as documents CAT/C/SR.143 and CAT/C/SR.143/Add.1 respectively.

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The third part (public) of the meeting was called to order at 11 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Report of China (CAT/C/7/Add.14)

1. At the invitation of the Chairman, the Chinese delegation, composed of Mr. JIN Yongjian, Mr. LIAO Jincheng, Mr. ZHANG Yishan, Mr. CHEN Weidian, Mr. ZHANG Jun, Mr. HAO Chiyong, Mr. LI Yuqian, Mr. SHEN Yongxiang, Mr. LIU Zhenmin and Ms. LI Linmei, took seats at the Committee table.

2. Mr. JIN Yongjian recalled that China had become a party to the Convention against Torture in November 1988 and that in December 1989 the Chinese Government had submitted its initial report, considered by the Committee in April 1990. The report now before the Committee (CAT/C/7/Add.14) had been drawn up in accordance with the general guidelines regarding the form and contents of the reports to be submitted by States parties under paragraph 1 of article 19 of the Convention (CAT/C/4/Rev.2), and incorporated the questions put by the Committee during the consideration of the initial report. It was in two parts. The first part outlined China's political, legislative and judicial systems (political structure, sources of law, organs of justice, criminal procedure, penalties, position of international treaties in domestic law, etc.). The second part dealt, on an article-to-article basis, with the implementation of the Convention and gave figures concerning the legislative, judicial and administrative measures taken by China.

3. In both its legislative enactments and its judicial practice, China was very mindful of the protection of the rights and freedoms of citizens and their democratic rights. The Chinese Constitution was very explicit in that respect and the Chinese Penal Code explicitly prohibited torture, thereby protecting the rights of the individual and the inviolability of human dignity. The law on criminal procedure set out in detail the procedure for investigating and punishing offences, including the crime of torture. Various legislative instruments also provided for civil and administrative sanctions for offences not regarded as crimes, namely the general principles of civil law, laws on administrative procedure, rules on sanctions in the maintenance of public order, regulations on re-education through labour, regulations on rewards or penalties for the personnel of bodies responsible for the administration of justice, etc. Those instruments had an important role in preventing and combating torture and provided a basis for compensating any victims.

4. In accordance with the Constitution, relations between the people's courts, the people's procuratorates and the public security services were marked by a sense of the responsibilities of each, and by cooperation and reciprocal monitoring. In judicial practice, the public security services were responsible for pre-trial proceedings, investigation and detention. The people's procuratorates examined criminal cases and initiated public prosecution proceedings, while hearings were conducted independently by the

people's courts. The organs of the administration of justice were responsible for the execution of judgements. The judicial authorities took the principle of the prohibition of torture very seriously and an investigation was carried out whenever there was any infringement thereof.

5. There existed a whole judicial and administrative procedure whose purpose was to ensure the strict application of the law and to denounce any denials of justice. Procurators concerned themselves with illegal acts committed by ordinary citizens but also with crimes imputable to State organs, including those responsible for the application of the law. Under the prohibition against torture, procurators could approve or quash an arrest; they examined cases, initiated proceedings and visited places of detention. Any allegation of torture or of human rights violation was referred to the procurators and proceedings were initiated if it was considered that a crime had been committed.

6. In accordance with its obligations under the Convention, China had made considerable efforts in the legislative and judicial fields. The legislative authority, while continuing to apply effectively the provisions against torture set out in the Constitution and in existing laws, had promulgated a set of laws and regulations concerning, for instance, places of detention (March 1990) or the police hierarchy (1992). A law on prisons, regulations on magistrates and other regulations on procurators were currently being prepared. The object was to draw up standards of professional conduct whereby the law could be applied more precisely and more strictly. Another law currently being prepared was the State compensation law.

7. All the aforementioned facts demonstrated that the legislative, judicial and administrative measures taken by China to prohibit torture were in compliance with the Convention.

8. He referred to one of the questions raised during the consideration of the initial report, namely the position of Tibet in China's constitutional and administrative structure. He pointed out that Tibet was an integral part of Chinese territory and that the political and judicial system of the People's Republic also applied in Tibet. The Tibetan population enjoyed the same political rights as the other Chinese populations. Furthermore, there existed special provisions concerning the autonomous national regions that took account of the specificity of Tibet.

9. Since 1989 the number of cases of torture referred to the procurators had been steadily declining and had dropped from 472 in 1990 to 407 in 1991, representing a 13.5 per cent decrease, then to 339 in 1992, representing a 16.7 per cent decrease as compared with the previous year. In his speech at the eighth session of the National People's Congress, the Procurator-General of the People's Supreme Procuratorate had reported on the constant progress achieved in the prevention of torture.

10. He drew the Committee members' attention to the changing situation in his country and to the efforts made by the Chinese Government. He noted that, before 1949, there had for 2,000 years been a feudal society and, for about 100 years, a semi-feudal and semi-colonial society in China. For both external and domestic reasons, the People's Republic had for some 20 years

been unable to make any progress in developing a legal system and building democracy. A large number of the laws to which he had referred had indeed been drawn up only since 1979. Only since that time had the Government been endeavouring to introduce the rule of law. China was going to continue to give top priority to strengthening its democratic institutions and its legal system. That was an essential development in order not only to safeguard the fundamental rights of citizens in China but also to promote the socialist market economy, increase the number of reforms and open up to the outside world.

11. He also recalled that the population of China now numbered 1.16 billion and that even with a perfect legislative system, implementation would present enormous difficulties.

12. He drew attention to a five-year national education and awareness campaign on legal issues, which was to be extended for a second five-year period. He reiterated his Government's desire to have a constructive dialogue with the Committee and reaffirmed the seriousness of China's intentions. The information he had provided attested to the importance that China attached to the Convention against Torture.

13. Mr. DIPANDA MOUELLE (Rapporteur for China) recalled that the Committee had considered the initial report of China (CAT/C/7/Add.5) at its fourth session and had found it incomplete and not in keeping with the general guidelines regarding the form and contents of initial reports. Noting that a number of questions required clarification (sanctions applied in cases of acts of torture, use of evidence obtained under torture in judicial proceedings, definition of torture, role of medical personnel in the context of investigations into presumed cases of torture, application of the suspended death penalty, organization of the judiciary, conditions of detention, prosecution of torturers, inter alia), the Committee had requested a supplementary report. He paid tribute to the members of the delegation and commended the authors of the report under consideration (CAT/C/7/Add.14) for having complied with the Committee's recommendations. He also noted that China was one of the few countries to have annexed to its report all the questions put by the Committee and considered that this was an initiative to be encouraged.

14. He nevertheless wished to have some further information from the Chinese delegation. Firstly, it emerged from the report that the People's National Congress was the highest organ of State power and that its principal organ was the Standing Committee. He wondered how the supervisory functions exercised by the Committee in respect of the People's Supreme Court could be reconciled with the independence of the judiciary.

15. In paragraph 28 of the report (CAT/C/7/Add.14), it was stated that the President of the People's Supreme Court and the Procurator-General of the People's Supreme Procuratorate were elected by the People's National Congress. How were they elected and how were the other judges appointed and removed from office?

16. According to paragraph 52, at the end of 1991 there had been 4,329 people in Chinese prisons accused of counter-revolutionary crimes. Had all those people been convicted and, if so, what had their sentence been?

17. He also raised the question of the incorporation of the definition of torture in domestic law and, taking up Mr. Burns' argument, wondered how, if it were not so incorporated, it was possible, on the one hand, to establish statistics, and on the other, to punish psychological torture.

18. With regard to the second part of the report (dealing with the implementation of arts. 2 to 16 of the Convention), he began by noting with great satisfaction that, as it emerged from paragraph 68 of the document, the Government was attaching great importance to human rights awareness activities, and he was gratified to learn that the educational programme would be continued for a further five years. Concerning the question of mutual judicial assistance, referred to in paragraph 73 of the report, the Chinese delegation might say how reciprocity was ensured, considering that in China there was not yet any law or regulation concerning the procedure for extradition, and state whether the procedure followed in practice was in accordance with the provisions of the Convention. On the matter of the implementation of article 4 of the Convention, he wished to have further information about the legal remedies mentioned in the last sentence of paragraph 74 of the report. Furthermore, was the Chinese delegation able to provide the information requested by the Committee concerning any judicial decisions handed down against persons found guilty of acts of torture? Referring to paragraph 88, he wished to know whether the two-month period of detention should be understood as the period of police custody or that of pre-trial detention.

19. He wished to be informed of the legislative measures that had been adopted to guarantee universal jurisdiction as provided for in the Convention. The Chinese delegation might also state whether an arrested person could be extradited to another country where he would risk the death penalty and, if not, whether there existed in Chinese legislation mechanisms whereby the person concerned could be brought before the competent national authorities.

20. The Chinese Government was to be congratulated on the practical measures that it had taken to give wide publicity to the principles and standards of international human rights law, as was stated in paragraph 101 of the report, but it would be desirable for the Chinese delegation to make it clear whether such action was truly in accordance with the provisions of article 10 of the Convention and what was done by the Chinese Government to give practical effect to the provisions of that article.

21. With regard to the implementation of articles 11 and 12 of the Convention, he felt it desirable for the Chinese delegation to outline the rules applicable to the interrogation of suspects. Were they entitled, upon their arrest, to notify a member of their family, consult a qualified doctor and choose a lawyer? It would also be useful for the Chinese delegation to give statistics on persons convicted for acts of torture and on the number of complaints filed in that connection against public officials, and for it to inform the Committee of the findings of the investigations conducted and the number and nature of the judicial decisions handed down.

22. With regard to the implementation of article 14, he asked whether, in the event of the death of a person who had been a victim of acts of torture, his dependants were entitled to compensation and whether, if the perpetrator of an act of torture were acquitted, the victim could nevertheless be compensated and, if so, under what conditions. Furthermore, were foreigners subject to the same system as nationals?

23. Referring to article 15, he wished to be informed of any cases where it had been established that a statement or a confession had been obtained under torture or by illegal means. If such cases had occurred, what use did the judicial authorities make of the evidence thus obtained? Lastly, concerning the allegations of cases of torture in Tibet, and considering that the Chinese delegation had assured the Committee, following the consideration of the initial report, that the Government would conduct all the necessary investigations, he wished to be informed of the findings of any investigations that had been carried out.

24. Mr. BURNS (Co-Rapporteur for China) in turn congratulated the Chinese Government on the detailed report (CAT/C/7/Add.14) that it had submitted to the Committee, thus complying with the wishes expressed following consideration of China's initial report.

25. He especially welcomed the presence in the Chinese delegation of the Director of the People's Supreme Procuratorate, as he wished to be informed about the functions and responsibilities of the Procuratorate and to know, in particular, what kind of training was provided for the procurators.

26. His first question was whether in China provision was made for the crime of torture as such, since he gathered from paragraphs 107 and 108 of the report that only the extortion of confessions by torture was punishable by law. The Chinese delegation might wish to provide further details in this connection. He also noted that, according to paragraph 71 of the report, in China "an order from a superior officer or a public authority cannot be invoked to justify torture", which was fully in line with the provisions of the Convention. Did this rule derive from an administrative decision or did it have its source in legislation, and did it apply solely to torture practised for the purpose of extorting confessions or, generally, to all forms of torture wherever and by whomsoever they were perpetrated? Furthermore, it was stated in the report that under Chinese law there was no such thing as a political offence and that only counter-revolutionary activities were regarded as offences. The Chinese delegation might perhaps say whether that was not a way of defining political offences that was altogether peculiar to the Chinese authorities.

27. He then went on to talk about less formal types of detention than traditional imprisonment, especially a kind that was apparently widespread in China known as "shelter and investigation", of which the Committee had been largely informed, in particular by Amnesty International and the International League for Human Rights. That system, which was a form of administrative detention, had originally been designed for homeless persons, who were handed over to the police, investigated and then released. It appeared that the system was no longer being applied to the same end and that the persons thus detained were deprived of all the guarantees provided for by law and, in

particular, of the right to communicate with members of their families or their advocates. He wished to know to what authorities the public security services were answerable when they held persons by virtue of that type of administrative decision, and whether checks were made to ensure that the individual rights of detainees were respected. By way of illustration, he quoted figures communicated by the non-governmental organization, International Coalition for Human Rights in China, according to which, in 1988, 1.5 million persons had been submitted to such a system purely by a decision of the public security services, a large proportion of them had been held for more than the statutory 3 months, 28 persons had died as a result of torture and 8 persons had died in unexplained circumstances.

28. He hoped that the Chinese delegation would provide all the information available to it concerning the application of such a system in the previous five years and that it would state what measures had been taken by the relevant authorities following allegations of detainees being tortured and dying in suspicious circumstances in the special centres in question. In addition, he noted that in paragraph 110 of the report it was said that no one in China was "tried or detained in secret". What, however, was the position regarding procedural safeguards under the administrative system of "shelter and investigation"? In addition, referring to the first sentence of paragraph 115 of the report, he asked whether detainees subjected to such a system could, like all citizens, complain of any ill-treatment committed against them.

29. He quoted extracts from an International Amnesty report of March 1993 concerning the case of a former Chinese journalist imprisoned for several years, without being charged or tried, for having taken part in 1989 in demonstrations in support of democracy. After being taken into police custody, the journalist had been held in detention for more than a year on unspecified grounds then sentenced to a penalty of re-education through labour. The former detainee himself related particular cases in which prisoners had been tortured and subjected to ill-treatment and, in particular, where persons sentenced to death had been subjected to particularly shocking acts of mental cruelty. He had subsequently tried many times to go to court in order to denounce the suffering and inhuman treatment to which he had been subjected, but his efforts had always been to no avail. In view of this example, what were the remedies available to detainees in such situations? Referring to paragraphs 120 and 121 of the report, he also asked whether confessions obtained by force could be accepted as evidence for the prosecution in administrative or judicial proceedings. Concerning the figures quoted in paragraph 112 of the report, he also wished to have recent statistics on the number of prisoners in each of the country's prisons and on the number of persons placed in administrative detention.

30. With regard to the implementation of article 16 of the Convention, he reported figures communicated by Amnesty International concerning the application of the death penalty in China. In 1989, 282 persons had been sentenced to death and 273 executed; in 1990, 960 had been sentenced and 750 executed; in 1991, 1,600 had been sentenced and 1,050 executed; and in 1992, 1,891 had been sentence and 1,079 executed. Would the Chinese delegation confirm these figures or, if necessary, correct them? Furthermore what was the Chinese Government's source for the statement in paragraph 123 of the

report, that in most countries the death penalty remained in force? He also wondered how far it might not be regarded as cruel and inhuman treatment for the Government to suspend the application of the death penalty for more than two years and then decide from one day to the next to execute the condemned person. He also wondered about the truth of the information, communicated in particular by Amnesty International and the International League for Human Rights, to the effect that the bodies of executed persons were used for organ transplants without the prior consent either of the condemned person or of the members of his family. If the facts were true, what were the legal provisions that justified such a practice?

31. Regarding the situation in Tibet, he emphasized that the Committee had received numerous reports, both from non-governmental organizations like the International League for Human Rights, and from Tibetan sources, of repeated violations of human rights, the systematic use of force against peaceful demonstrations in Tibet and acts of religious and racial discrimination against the population at large. He then read out a report from the Tibetan Government in exile concerning the case of a woman who had been imprisoned in Tibet for taking part in a peaceful demonstration and who had been forced to give her blood, like many of her fellow prisoners. Apparently, American pharmaceutical companies were keen to buy the blood of persons living at high altitudes. Could the Chinese delegation confirm or refute those allegations? He recalled lastly that the Committee was duty bound to consider cases brought to its notice by NGOs and, in the interest of everyone, including the countries concerned, to seek to discover what the real situation was in those countries.

32. Mr. KHITRIN thanked the Chinese delegation for its report (CAT/C/7/Add.14), which answered many of the questions raised by members of the Committee during the consideration of the initial document. China had recently made considerable efforts to discharge its responsibilities under the Convention. He nevertheless wished to join with the previous speakers and ask a few questions in his turn. Paragraph 44 of the report stated that "the administrative sanctions are disciplinary measures taken under the law by administrative bodies against citizens, legal persons or other organizations which have contravened the laws or administrative regulations without having committed a crime". He wished to know the extent to which use was made of re-education through labour for the purpose of the aforesaid administrative sanctions. How many persons were currently concerned by such measures?

33. According to paragraph 71 of the report, in China, "an order from a superior officer or a public authority cannot be invoked to justify torture". Did this provision also apply to the military?

34. Paragraph 76 of the report stated that "the law formally prohibits corporal punishment" and that "the judicial authorities impose penalties ... on State officials who have inflicted such punishment ... on accused persons ... for the purpose of extorting confessions". Could the Chinese delegation specify the law in question and read out its main provisions to the Committee?

35. Regarding the period of pre-trial detention, it was noted in paragraph 88 that "in cases of extreme complexity or of exceptional importance, the People's Supreme Court can ask the Standing Committee of the People's Congress to approve a postponement of the judgement". Was not the Chinese Government proposing to amend the legislation in that regard and to set a limit on the period of pre-trial detention?

36. Paragraphs 94 and 95 of the report described the apparently satisfactory conditions existing in Chinese prisons. He nevertheless wished to have information about the number of persons who had died in prison or in reform-through-labour camps and to know whether public officials had already been convicted for causing the death of detainees?

37. Mr. BEN AMMAR said that he was not able to form a very clear idea of the situation in China. According to numerous reports from highly credible NGOs, the information communicated by Mr. Burns and a report drawn up by a Special Rapporteur of the Commission on Human Rights (E/CN.4/1993/26), the human rights situation in the country gave cause for alarm. However, the Government's reports were exhaustive and stated that China was fulfilling its obligations under international conventions and that the number of cases reported was altogether insignificant in relation to the country's huge population. The Committee would most certainly have been able to form a more accurate idea of the situation if China had recognized its competence under articles 21 and 22 of the Convention against Torture.

38. Article 11 of the Convention stipulated that "each State party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture". How was this systematic review carried out? Could an arrested person get in touch with a lawyer, and what was the status of lawyers in China? Were they independent? Could an arrested person request a medical examination, and what was the status of doctors, particularly forensic physicians, in the country?

39. Article 2 of the Convention stipulated that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction". Apart from the measures taken by the Chinese Government with a view to giving wider publicity to international human rights instruments in the country (in accordance with article 10 of the Convention), had any other laws or administrative measures recently been adopted?

40. According to paragraph 29 of the report (CAT/C/7/Add.14), "the public security services perform their judicial functions in keeping with the provisions of the Criminal Procedure Law (Code of Criminal Procedure) and must also abide by the regulations on arrest and police custody, the regulations on the administration of public security and penalties as well as the rules of conduct for police officers". Could the Chinese delegation append a copy of those instruments to its next report, due in November 1993?

41. Paragraph 31 quoted article 126 of the Constitution, which provided that "the people's courts shall, in accordance with law, exercise judicial power independently and they are not subject to interference from administration organs, social groups or individuals". Who were these "social groups"? Was the Chinese Communist Party included in their number and was it also subject to the obligation not to interfere in cases brought before the people's courts?

42. It was stated in paragraph 35 of the report that "after examination of the file transmitted to it by the public security service or after conducting its own investigation, the people's procuratorate shall decide either to initiate a public prosecution, or exempt the accused from prosecution, or not to prosecute or to close the case". What exactly was entailed by the last three options?

43. He endorsed Mr. Burns' comments about "counter-revolutionary crimes" and "political crimes". Could criticism of the country's economic or political system, formulated for instance in the press, be regarded as high treason, instigation of treason or rebellion, counter-revolutionary sabotage or incitement of counter-revolutionary propaganda? He wished to know lastly whether trade unions existed in China and what their status was?

44. Mr. GIL LAVEDRA thanked in turn the Chinese delegation for having replied in detail to the questions raised during the consideration of China's previous report. He endorsed the questions put by Mr. Dipanda Mouelle and Mr. Burns and also, for his part, wished to have explanations regarding the procedures for dismissing judges and the hierarchy of penalties in China. He was surprised that "counter-revolutionary crimes" were punished more severely than "homicides".

45. According to paragraph 107 of the report, from 1983 to 1987, the procuratorates dealt with more than 30,000 offences involving infringement on other citizens' rights of the person and democratic rights, and over 20,000 cases had been brought to court. It also stated that, "in the overwhelming majority of cases, these criminal acts were not directly connected with law enforcement by State agents but were the result of any insufficient awareness of the law and legality that led ordinary citizens to commit acts in violation of the law". What exactly did that mean? Had sentences been handed down?

46. Like his colleagues, he was surprised that the information received from NGOs should be so different from the information provided by the Chinese authorities in their report. He recalled that the Special Rapporteur of the Commission on Human Rights had also in his report (E/CN.4/1993/26) expressed regret that torture and other cruel, inhuman or degrading treatment or punishment were common practice in Tibet and China. For the provisions of the Convention to be better implemented, the Chinese authorities should pay special attention to the conditions of pre-trial detention and to the possibility, for detainees, to get in touch with a lawyer and with their families and to have access to medical services. It was essential for the Chinese Government to be able to monitor the way that detainees were treated in the country's prisons.

47. Mr. EL IBRASHI endorsed the remarks made by his colleagues. He also wished to have details about the conditions of incommunicado detention. Reports from Amnesty International and other NGOs cited many cases of persons held incommunicado, in addition to the study by the Special Rapporteur already referred to which reaffirmed that incommunicado detention facilitated the use of torture.

48. He then went back to the fact that in Chinese law there was no definition of torture. Accordingly, acts of torture were not generally punished, and only offences consisting in obtaining confessions from an accused person under torture could be brought before the courts. He had information from an NGO concerning a person who had died as a result of torture and serious wounds inflicted by the authorities. The torturers had not been convicted under criminal law and had been given light sentences which did not reflect the gravity of the crimes committed.

49. He asked whether the independence of judges was guaranteed in China and what the relationship was between the Chinese Communist Party and the judiciary. He asked lastly whether the Chinese Government was proposing to recognize the competence of the Committee under articles 21 and 22 of the Convention.

50. The CHAIRMAN proposed that members of the Committee who had not yet been able to give their views on the report of China do so at the following meeting.

51. It was so decided.

The meeting rose at 1 p.m.